

**Executive Summary – Enforcement Matter – Case No. 42588**  
**Texas State University-San Marcos**  
**RN100221480**  
**Docket No. 2011-1728-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Texas State University, 601 University Drive, San Marcos, Hays County

**Type of Operation:**

Cogeneration plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 24, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$17,150

**Amount Deferred for Expedited Settlement:** \$3,430

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$13,720

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 42588**  
**Texas State University-San Marcos**  
**RN100221480**  
**Docket No. 2011-1728-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** August 11, 2011

**Date(s) of NOE(s):** September 1, 2011

***Violation Information***

1. Failed to report all instances of deviations. Specifically, the violations documented during TCEQ Investigation No. 762943 were not included as deviations in the semi-annual deviation report for the July 9, 2009 through January 8, 2010 reporting period [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b) and Federal Operating Permit No. O1568, General Terms and Conditions].
2. Failed to conduct initial compliance testing. Specifically, compliance testing that is required to occur within 90 days after the July 16, 2009 installation date of the boilers was not performed [30 TEX. ADMIN. CODE § 116.115(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), Standard Permit Registration No. 88323, Condition No. 5(B)(v)].
3. Failed to notify the TCEQ prior to the commencement of operations. Specifically, notification of start-up for the COGEN 1 and 2 boilers, EPNs SB-1 and SB-2 was not submitted. The two boilers were installed July 16, 2009 and began operating on July 24, 2009 and July 16, 2009, respectively [30 TEX. ADMIN. CODE § 116.615(5)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
4. Failed to determine compliance with the opacity standard. Specifically, the Respondent did not make an opacity determination for EPNs SB-1 and SB-2 as required when the boilers began operating on July 24, 2009 and July 26, 2009, respectively, and at least once per year thereafter [30 TEX. ADMIN. CODE § 116.115(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), Standard Permit Registration No. 88323, Condition No. 4(B)(vii)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures at the Plant:

- a. On December 8, 2011, notified the TCEQ of commencement of operations for the COGEN 1 and 2 boilers, Emissions Point Numbers (“EPNs”) SB-1 and SB-2; and
- b. By December 14, 2011, completed visible emissions observations for EPNs SB-1 and SB-2, and implemented measures to ensure that opacity compliance determinations are conducted on an annual basis.

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**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, implement procedures to ensure that all deviations are reported in the deviation reports;
- b. Within 45 days, submit certification of compliance with Ordering Provision a.;
- c. Within 90 days, conduct initial compliance testing on EPNs SB-1 and SB-2 as required by Standard Permit Registration No. 88323; and
- d. Within 120 days, submit written certification demonstrating compliance with Ordering Provision c.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Raymond Marlow, P.G., Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8785; Debra Barber, Enforcement Division, MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** William A. Nance, Vice President for Finance & Support Services, Texas State University-San Marcos, 601 University Drive, San Marcos, Texas 78666  
Sheri Lara, Director, Utilities Operations, Texas State University-San Marcos, 601 University Drive, San Marcos, Texas 78666  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	6-Sep-2011	<b>PCW</b>	20-Dec-2011	<b>Screening</b>	12-Sep-2011	<b>EPA Due</b>	2-Jun-2012
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## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Texas State University-San Marcos		
<b>Reg. Ent. Ref. No.</b>	RN100221480		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42588	<b>No. of Violations</b>	4
<b>Docket No.</b>	2011-1728-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Raymond Marlow, P.G.
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$13,500

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 30.0% Enhancement **Subtotals 2, 3, & 7** \$4,050

Notes

Enhancement for two NOVs with same/similar violations and one order with denial.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$400

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$10,375  
Approx. Cost of Compliance \$16,950

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$17,150

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$17,150

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$17,150

**DEFERRAL** 20.0% Reduction **Adjustment** -\$3,430

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$13,720

Screening Date 12-Sep-2011

Docket No. 2011-1728-AIR-E

PCW

Respondent Texas State University-San Marcos

Policy Revision 2 (September 2002)

Case ID No. 42588

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100221480

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 30%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two NOVs with same/similar violations and one order with denial.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 30%

Screening Date 12-Sep-2011

Docket No. 2011-1728-AIR-E

PCW

Respondent Texas State University-San Marcos

Policy Revision 2 (September 2002)

Case ID No. 42588

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100221480

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(A), Tex. Health & Safety Code § 382.085(b) and Federal Operating Permit No. O1568, General Terms and Conditions

Violation Description

Failed to report all instances of deviations, as documented during the August 11, 2011 investigation. Specifically, the violations documented during TCEQ Investigation No. 762943 were not included as deviations in the semiannual deviation report for the July 9, 2009 through January 8, 2010 reporting period.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	X		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

509 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

One single event is recommended for the one deficient report.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$149

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

# Economic Benefit Worksheet

Respondent Texas State University-San Marcos  
Case ID No. 42588  
Reg. Ent. Reference No. RN100221480  
Media Air  
Violation No. 1

Percent Interest 5.0  
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,500	7-Feb-2010	1-Feb-2012	1.98	\$149	n/a	\$149
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to implement procedures to ensure all deviations are reported in the deviation reports. The Date Required is the date the deviations were due to be reported. The Final Date is the date corrective actions are expected to be completed.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$149



Screening Date 12-Sep-2011

Docket No. 2011-1728-AIR-E

PCW

Respondent Texas State University-San Marcos

Policy Revision 2 (September 2002)

Case ID No. 42588

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100221480

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c) and Tex. Health &amp; Safety Code § 382.085(b), Standard Permit Registration No. 88323, Condition No. 5(B)(v)

## Violation Description

Failed to conduct initial compliance testing as documented during the August 11, 2011 investigation. Specifically, compliance testing that is required to occur within 90 days after the July 16, 2009 installation date of the boilers was not performed.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 2

738 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,000

Two single events are recommended for the two units not tested.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$805

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

# Economic Benefit Worksheet

Respondent Texas State University-San Marcos

Case ID No. 42588

Reg. Ent. Reference No. RN100221480

Media Air  
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$7,000	14-Oct-2009	1-Feb-2012	2.30	\$805	n/a	\$805
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated expense to conduct compliance testing. The Date Required is the date testing was required to be conducted. The Final Date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$7,000

TOTAL

\$805

Screening Date 12-Sep-2011

Docket No. 2011-1728-AIR-E

PCW

Respondent Texas State University-San Marcos

Policy Revision 2 (September 2002)

Case ID No. 42588

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100221480

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 116.615(5)(A) and Tex. Health &amp; Safety Code § 382.085(b)

## Violation Description

Failed to notify the TCEQ prior to the commencement of operations, as documented during the August 11, 2011 investigation. Specifically, notification of start-up for the COGEN 1 and 2 boilers, Emissions Point Numbers ("EPNs") SB-1 and SB-2, was not submitted. The two boilers were installed July 16, 2009 and began operating on July 24, 2009 and July 16, 2009 respectively.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 2

738 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$5,000

Two single events, one for each boiler, are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$230

Violation Final Penalty Total \$6,500

This violation Final Assessed Penalty (adjusted for limits) \$6,500

# Economic Benefit Worksheet

Respondent Texas State University-San Marcos

Case ID No. 42588

Reg. Ent. Reference No. RN100221480

Media Air

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	16-Jul-2009	11-Aug-2011	2.99	\$30	\$200	\$230
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated expense to notify the Commission of the start up of the cogeneration unit. The Date Required is the date of the initial start up. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$200

TOTAL

\$230

Screening Date 12-Sep-2011

Docket No. 2011-1728-AIR-E

PCW

Respondent Texas State University-San Marcos

Policy Revision 2 (September 2002)

Case ID No. 42588

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100221480

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b),  
Standard Permit Registration No. 88383, Condition No. 4(B)(vii)

Violation Description

Failed to determine compliance with the opacity standard, as documented during the August 11, 2011 investigation. Specifically, the Respondent did not make an opacity determination for EPNs SB-1 and SB-2 as required when the boilers began operating on July 24, 2009 and July 26, 2009, respectively, and at least once per year thereafter.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 4

769 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$4,000

Four single events are recommended (initial and one annual compliance determination per boiler).

## Good Faith Efforts to Comply

10.0% Reduction

\$400

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

Corrective actions were completed on December 14, 2011, after the September 1, 2011 NOE.

Violation Subtotal \$3,600

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$9,191

Violation Final Penalty Total \$4,800

This violation Final Assessed Penalty (adjusted for limits) \$4,800

# Economic Benefit Worksheet

Respondent Texas State University-San Marcos  
 Case ID No. 42588  
 Reg. Ent. Reference No. RN100221480  
 Media Air  
 Violation No. 4

Percent Interest 5.0  
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	11-Aug-2011	14-Dec-2011	0.34	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to implement measures to ensure opacity compliance determinations are conducted in a timely manner. The Date Required is the investigation date. The Final Date is the date corrective actions were completed.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$8,000	24-Jul-2009	11-Aug-2011	2.97	\$1,187	\$8,000	\$9,187
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided costs for the initial and annual compliance determination. The Date Required is the earliest date of non-compliance. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$8,250

TOTAL

\$9,191

## Compliance History

Customer/Respondent/Owner-Operator:	CN602644106	Texas State University - San Marcos	Classification: AVERAGE	Rating: 4.89
Regulated Entity:	RN100221480	TEXAS STATE UNIVERSITY	Classification: AVERAGE	Site Rating: 11.67

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HK0036C
	AIR OPERATING PERMITS	PERMIT	1568
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD980812168
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	66137
	POLLUTION PREVENTION PLANNING	ID NUMBER	P04375
	AIR NEW SOURCE PERMITS	PERMIT	18110
	AIR NEW SOURCE PERMITS	REGISTRATION	26345
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HK0036C
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX657
	AIR NEW SOURCE PERMITS	AFS NUM	4820900004
	AIR NEW SOURCE PERMITS	REGISTRATION	88323
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1050003
	WATER LICENSING	LICENSE	1050003
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HK0036C

Location: 601 UNIVERSITY DR, SAN MARCOS, TX, 78666

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: October 24, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 24, 2006 to October 24, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Raymond Marlow Phone: (409) 899-8785

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 03/20/2010

ADMINORDER 2009-1568-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
30 TAC Chapter 122, SubChapter B 122.146(2)  
30 TAC Chapter 122, SubChapter B 122.146(5)(C)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov: FOP No. O-01568, GTC OP

Description: Failed to submit the annual compliance certification ("ACC") to the Environmental Protection Agency ("EPA") within 30 days after the July 9, 2008 to July 8, 2009 ACC period and to reference three deviations (previously reported in a semi-annual deviation report) in the ACC submitted to the Executive Director ("ED") on July 16, 2009.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov: NSR Permit No. 18110, SC 6 PERMIT

Description: Failed to submit a quarterly report for the first quarter of 2009 for the Cooper Bessemer Dual Fuel Engine, emission point number E-G1, that is required to contain fuel analyses to indicate fuel

sulfur content greater than permitted limits and a listing of all one hour rolling average periods that the engine operated outside the compliance range for the established operating parameters.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 08/27/2007 (573537)

2 02/14/2008 (618086)

3 08/26/2008 (699586)

4 12/19/2008 (721660)

5 09/03/2009 (762943)

6 09/14/2009 (775569)

7 08/16/2010 (849108)

8 08/30/2011 (949039)



E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/29/2007 (573537) CN602644106  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)  
Description: Failure to submit the Title V annual compliance certification within 30 days after the end of the certification period.

Date: 08/29/2008 (699586) CN602644106  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 116, SubChapter B 116.110(c)  
5C THSC Chapter 382 382.085(b)  
Special Condition #5 PERMIT  
Description: Failure to comply with 30 TAC TAC 116.110(c) - requires all NSR permit holders to comply with all the special conditions (SCs) contained in the permit document. Facility failed to comply with SC#5 of its NSR Permit 18110.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 116, SubChapter B 116.110(c)  
5C THSC Chapter 382 382.085(b)  
Special Condition #6 PERMIT  
Description: Failure to comply with 30 TAC TAC 116.110(c) - requires all NSR permit holders to comply with all the special conditions (SCs) contained in the permit document. Facility failed to comply with SC#6 of its NSR Permit 18110 - submit quarterly reports.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
Special Condition #2(A) and (B) OP  
Description: Failure to comply with 30 TAC 122.143, which requires permit holders to comply with all terms and conditions of the Federal Operating Permit (FOP). Facility failed to comply with Special Condigion #2 of FOP O1568.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
30 TAC Chapter 122, SubChapter B 122.145(2)(A)  
30 TAC Chapter 122, SubChapter B 122.145(2)(B)  
30 TAC Chapter 122, SubChapter B 122.145(2)(C)  
5C THSC Chapter 382 382.085(b)  
General Terms and Conditions OP  
Description: Failure to comply with 30 TAC 122.143, which requires permit holders to comply with all terms and conditions of the Federal Operating Permit (FOP). TSU failed to comply with per General Terms and Conditions of FOP. which require reporting instances of deviations per 30 TAC 122.145(2) - FOP Reporting Terms and Conditions.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
TEXAS STATE UNIVERSITY-SAN	§	TEXAS COMMISSION ON
MARCOS	§	
RN100221480	§	ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2011-1728-AIR-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas State University-San Marcos ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a cogeneration plant at 601 University Drive in San Marcos, Hays County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 6, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seventeen Thousand One Hundred Fifty Dollars (\$17,150) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Thirteen Thousand Seven Hundred Twenty Dollars (\$13,720) of the administrative penalty and Three Thousand Four Hundred Thirty Dollars (\$3,430) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes the Respondent has implemented the following corrective measures at the Plant:
  - a. On December 8, 2011, notified the TCEQ of commencement of operations for the COGEN 1 and 2 boilers, Emissions Point Numbers ("EPNs") SB-1 and SB-2; and
  - b. By December 14, 2011, completed visible emissions observations for EPNs SB-1 and SB-2, and implemented measures to ensure that opacity compliance determinations are conducted on an annual basis.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to report all instances of deviations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b) and Federal Operating Permit No. O1568, General Terms and Conditions, as documented during an investigation conducted on August 11, 2011. Specifically, the violations documented during TCEQ Investigation No. 762943 were not included as deviations in the semiannual deviation report for the July 9, 2009 through January 8, 2010 reporting period.

2. Failed to conduct initial compliance testing, in violation of 30 TEX. ADMIN. CODE § 116.115(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), Standard Permit Registration No. 88323, Condition No. 5(B)(v), as documented during an investigation conducted on August 11, 2011 investigation. Specifically, compliance testing that is required to occur within 90 days after the July 16, 2009 installation date of the boilers was not performed.
3. Failed to notify the TCEQ prior to the commencement of operations in violation of 30 TEX. ADMIN. CODE § 116.615(5)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 11, 2011. Specifically, notification of start-up for the COGEN 1 and 2 boilers, EPNs SB-1 and SB-2 was not submitted. The two boilers were installed July 16, 2009 and began operating on July 24, 2009 and July 16, 2009, respectively.
4. Failed to determine compliance with the opacity standard, in violation of 30 TEX. ADMIN. CODE § 116.115(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), Standard Permit Registration No. 88323, Condition No. 4(B)(vii), as documented during an investigation conducted on August 11, 2011. Specifically, the Respondent did not make an opacity determination for EPNs SB-1 and SB-2 as required when the boilers began operating on July 24, 2009 and July 26, 2009, respectively, and at least once per year thereafter.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas State University-San Marcos, Docket No. 2011-1728-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, implement procedures to ensure that all deviations are reported in the deviation reports;

- b. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision No. 2.a. in accordance with Ordering Provision No. 2.d;
- c. Within 90 days after the effective date of this Agreed Order, conduct initial compliance testing on EPNs SB-1 and SB-2 as required by Standard Permit Registration No. 88323; and
- d. Within 120 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S. IH 35, Ste.100  
Austin, Texas 78704-5700

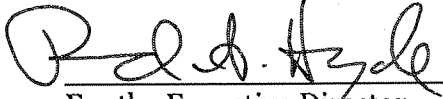
- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

3/23/12

\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

William A. Nance  
Signature

WILLIAM A. NANCE  
VICE PRESIDENT FOR FINANCE  
& SUPPORT SERVICES

1/4/12  
Date

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Texas State University-San Marcos

\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.